

September 21, 2010

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: Preserving the Open Internet, GN Docket No. 09-191; Framework for Broadband  
Internet Service, GN Docket No. 10-127

Dear Ms. Dortch:

We are writing this letter in response to a myriad of misrepresentations made by AT&T about the Open Technology Initiative (OTI) views on the issue of prioritization and protecting an Open Internet. AT&T seeks in their letter to the Commission on September 15, 2010 to obfuscate the stance held by OTI with respect to paid prioritization of Internet traffic. In our September 1st letter to the Commission, we sought to clarify the scope of the certain IETF RFCs that established practices for business class users to prioritize traffic in response to mis-characterizations by AT&T that they not only support but require third-party paid prioritization. As we provided in the letter, the RFCs describe a technology consistent with the neutral and end-to-end architecture of the Internet that has been the status quo for most of its history. The DiffServ technology itself does not favor an AT&T or any other provider controlled tiered-Internet that picks winners or losers, but simply provides a tool for enterprise class users to manage bandwidth utilization within their network connections.

The mere fact that we agree that AT&T's current practices with respect to these enterprise users are standard within the Internet service provision industry and unlikely to run afoul of Open Internet rules does not indicate that the RFCs nor OTI support the ability of Internet service providers to define prioritization choices for end-users or charge third-party applications and content providers for prioritized access to AT&T's residential broadband customers. As we stated in our previous letter, which AT&T has misconstrued:

“the RFCs cited by AT&T are framed in terms of enterprise service and are written with enterprise-level customers and SLAs in mind, where the application of the RFCs is a collaborative exercise between the network engineers of the enterprise and those of the carrier. In many cases, carrier practices maintain the lower level network resources and management functions using switching protocols such as MPLS to make end-to-end connections for their enterprise customers. Within these connections, carriers respect Diffserv priority flags established by the enterprise customers for their own incoming and outgoing traffic flows.”

This is something quite different from the 'pay to play' prioritization model envisioned by former SBC/AT&T CEO, Ed Whitacre, to charge Internet companies for the use of AT&T's pipes to reach its customers.<sup>1</sup> DiffServ was intended to allow end-users to differentiate between different kinds of Internet services (like video vs. FTP) on their Internet connection, not different participants (like Hulu vs. Youtube). The fact that AT&T offers the Diffserv service to enterprise customers for a fee does not lend any more or less credence to AT&T's desire for a 'pay to play' Internet. It is doubtful that the RFC's cited by AT&T contemplated Mr. Whitacre's version of the Internet that would seek to fundamentally replace the open and end-user driven Internet in favor of a new technological model that

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<sup>1</sup> See e.g. “At SBC its about “scale and scope,”” Business Week, November 7, 2005, available at [http://www.businessweek.com/magazine/content/05\\_45/b3958092.htm](http://www.businessweek.com/magazine/content/05_45/b3958092.htm).

is closer to cable television.

Moreover, AT&T's focus on paid prioritization for hypothetical medical monitoring and distance learning services that do not exist and that AT&T has made no commitments to offer to consumers, is clearly an effort to distract from AT&T's explicitly stated goal to charge big Internet content and application companies for access (prioritized or otherwise) to their customers. Even so, such applications are less likely to be developed on an Internet where AT&T and other providers sell access to the highest bidder and where new entrants and non-commercial applications would be de-prioritized in favor of existing and more lucrative commercial uses.

AT&T's continuing effort create confusion on these issues is exactly why explicit and enforceable Commission rules are needed to protect the open Internet and ensure that it remains an open platform for innovative commercial and non-commercial services and applications; a position that the Open Technology Initiative has long-supported.

Sincerely,

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